

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SEAN P. HARRINGTON,

Plaintiff,

Case No. 10-11946

v.

Hon. John Corbett O'Meara

CITY OF DETROIT, *et al.*,

Defendants.

**ORDER AWARDING SANCTIONS**

On September 16, 2010, the court entered a scheduling order setting a dispositive motion cut-off date of March 18, 2011, and the final pretrial conference for June 29, 2011, at 2 p.m. On February 3, 2011, the parties stipulated to extend discovery to March 31, 2011, and the motion cut-off date to April 15, 2011, as a result of Defendants' counsel's (Dennis Burnett) illness in the winter of 2010-2011.<sup>1</sup> The parties did not seek to postpone the date of the final pretrial conference. On March 4, 2011, Nellie J. L. Lee filed an appearance on behalf of Defendants. John A. Schapka also filed an appearance on behalf of Defendants on April 27, 2011.

Although the parties submitted a proposed joint final pretrial order, none of Defendants' attorneys appeared at the final pretrial conference scheduled for June 29, 2011. On June 30, 2011, the court ordered Mr. Burnett to show cause why sanctions should not be imposed for the failure to appear. On July 12, 2011, Mr. Burnett submitted an affidavit in response to the order

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<sup>1</sup> After the dispositive motion deadline passed, Defendants sought to extend it. The court denied the motion, finding that Defendants did not present good cause for the delay.

to show cause. Mr. Burnett stated that “due to my medical leave . . . an associate from my office received the 9-16-2010 Scheduling Order” and that he “did not diary the Final Pre-Trial Conference date.” Mr. Burnett explained that he was in trial in state court on July 5, 2011. This does not explain Mr. Burnett’s whereabouts on June 29, 2011, which is when the final pretrial conference was scheduled. Further, Defendants have not explained why Ms. Lee or Mr. Schapka, also attorneys of record, did not appear at the conference.

Pursuant to Fed. R. Civ. P. 16(f), the court may impose sanctions if a party or its attorney “fails to appear at a scheduling or other pre-trial conference.” Fed. R. Civ. P. 16(f)(2) provides,

Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses – including attorney’s fees – incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

Id. (emphasis added). Defendants have failed to demonstrate that their failure to appear at the final pre-trial conference was “substantially justified.” Although Mr. Burnett has taken responsibility for this failure, it is not his alone. As attorneys of record, Ms. Lee and Mr. Schapka are also responsible for complying with the court’s scheduling order. Defendants’ repeated failure to do so is neither excusable nor justified; it evidences a systematic failure at the City of Detroit Law Department to represent its client in a professional manner.

Plaintiff and his counsel appeared for the conference and were inconvenienced and prejudiced by Defendants’ failure to appear. Plaintiff left work to attend; his counsel states that he spent ten hours (at \$350 per hour) preparing for, traveling to, and waiting for Defendants to appear at the conference.

In light of this unjustified failure to comply with the court’s scheduling order, the court

will sanction Defendants, Dennis Burnett, Nellie J. L. Lee, and John A. Schapka, jointly and severally, in the amount of \$3,000, payable to the Clerk of the Court within ten (10) days. In addition, they will pay Plaintiff's reasonable attorney's fees and expenses associated with the failure to attend the pretrial conference. Plaintiff's counsel shall submit an affidavit and billing records within ten (10) days to aid the court in determining the amount of the attorney's fees and expenses. Further, the court has rescheduled the joint final pretrial conference for **August 17, 2011, at 2:30 p.m. in Ann Arbor.** Defendants' failure to appear at the conference will result in default.

**SO ORDERED.**

s/John Corbett O'Meara  
United States District Judge

Date: July 26, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, July 26, 2011, using the ECF system.

s/William Barkholz  
Case Manager